

Before

James C. Peck, Jr.
Arbitrator

In the Matter of the Arbitration Between

**FRATERNAL ORDER OF POLICE,
LODGE NO. 5**

V.

AAA Case No. 01-16-0001-7113
P/O Steven R. Hartzell
(Suspension & Transfer)

THE CITY OF PHILADELPHIA

Hearing Date: June 20, 2017
Decision Date: July 17, 2017

Appearances:

For the Union – James E. Goodley, Esq., Jennings & Sigmond, P.C.

For the City of Philadelphia – Kia Ghee, Esq., City of Philadelphia Law Department

Procedural Background

The City of Philadelphia and Fraternal Order of Police Lodge, No. 5 are parties to a collective bargaining agreement with a term of July 1, 2014 through June 30, 2017.¹

¹ See Joint Exhibit 1, received into evidence.

The agreement recognizes FOP Lodge 5 as the exclusive collective bargaining representative of a unit of police officers employed by the City of Philadelphia and contains, among other things, a Grievance-Arbitration procedure (Article XXI) culminating in final and binding arbitration under the auspices of the American Arbitration Association. This arbitration was conducted pursuant to the terms of the parties' collective bargaining agreement.

The instant matter arises from a grievance filed by the Union on behalf of Police Officer Steven R. Hartzell. Officer Hartzell was suspended for three days and transferred from his position in the Community Relations Unit for having violated Article 5, Section 001-10 of the Philadelphia Police Department's Disciplinary Code. This Article deals with Neglect of Duty and sets forth the range of punishments to be imposed as a consequence. The grievance alleges that the discipline imposed by the City of Philadelphia was excessive. The City has denied the grievance. As the issue in dispute could not be resolved under the terms of the contractual grievance-arbitration procedure, the underlying grievance was referred to the American Arbitration Association for selection of an arbitrator. By letter dated June 9, 2016, the undersigned was appointed as the arbitrator in this matter.

An evidentiary hearing concerning the grievance was conducted on June 20, 2017, at the Philadelphia office of the American Arbitration Association. Both parties were represented by counsel, and at hearing were afforded the opportunity to examine and cross-examine witnesses, and to introduce relevant exhibits. The Grievant, Police Officer Steven R. Hartzell, was present and participated fully in the proceeding. Both parties made oral arguments on the record.

Issue

In view of all the circumstances, was the discipline imposed against Officer Hartzell excessive?

Background

The Grievant has been a Philadelphia Police Officer since 1993. In June 1999 he started working in the Department's Community Relations Unit. At all times relevant herein, the Community Relations Unit was comprised of thirteen Police Officers along with a supervisory team consisting of a Captain, a Lieutenant, a Sergeant, and a Corporal.

The Community Relations Unit performs a number of community-based functions, including educating elementary school students about the dangers of drugs and gangs. In this regard, officers assigned to the unit are sent to schools to meet with and teach students participating in the D.A.R.E. (Drug Abuse Resistance Education) and G.R.E.A.T. (Gang Resistance Education and Training) programs. Officers spend four days a week at their assigned schools. They typically spend the fifth day of their work week at the Unit's headquarters performing administrative tasks. Officers in the Community Relations Unit are scheduled to work Monday through Friday from 8:00 a.m. to 4:00 p.m.

When at a school D.A.R.E and G.R.E.A.T. presentations do not consume an officer's entire work day. Officers therefore have a great deal of unscheduled time at their assigned schools in which they can get to know the students. It is hoped that through these interactions the students will come to trust the police and view them as part of the community.

Unlike police officers who are assigned to a police district, officers working at a school as part of the Community Relations Unit are not required to report for roll call either at the beginning or the end of the day. They report to the assigned school directly from home. Once they arrive at the school, they are to call the Captain's Aide who logs in where the officer is working and the officer's time of arrival.

Facts

Grievant Hartzell was assigned to work at the Hartranft School on Monday, November 23, 2015, and again on Wednesday, November 25, 2015. During the course of the day on November 23, 2015, Hartzell mentioned to certain teachers at the school that he might be attending a funeral of a friend that would be taking place on November 25, 2015. He testified that he was unsure whether he was emotionally prepared to attend the funeral as the death of his elderly friend had occurred within weeks of the death of a relative. Regardless of the reason behind it, Police Officer Hartzell admits that he did not tell his superiors in the police department that he was considering attending a funeral that would take place on November 25, 2015 at the same time he was scheduled to be at the Hartranft School.

The Grievant contends that when he reported to work at the Hartranft School on Wednesday, November 25, 2015 he still had not decided whether or not he was emotionally prepared to attend the funeral. Hartzell testified that he therefore called Captain's Aide D [REDACTED] J [REDACTED] at 8:05 a.m. and reported that he was at the school. There is no dispute that by making this call, Hartzell indicated to his superiors that he was "on the clock" and performing his assigned duties.

The Grievant testified that after making the call and speaking to a teacher at the school he decided to attend the viewing for his friend that was taking place from 8:00 a.m. to 9:30 a.m. He further testified that after attending the viewing he decided to also attend the funeral that was not scheduled to start until 10:00 a.m.

Police Officer Hartzell told no one either at the school or at the police department that he had left the school to attend the viewing and the funeral. His superiors were therefore left with the false understanding that he was at work performing his assignments and entitled to pay for a full day's work.

Police officers are granted funeral leave to attend the funerals of certain relatives. With respect to the funerals of friends, police officers must use their vacation time. Police Officer Hartzell admitted that he knew the procedure for requesting leave. There is nothing to suggest that if the Grievant had submitted a memo requesting the use of vacation time in order to attend the viewing and the funeral his request would not have been granted.

At about 11:55 a.m. while the Grievant was driving back to Hartranft School he received a text from [REDACTED] M [REDACTED] L [REDACTED] of the Community Relations Unit. [REDACTED] L [REDACTED] had checked in on Hartzell at the Hartranft School and had discovered that he was missing. The text instructed Hartzell to go directly to headquarters.

Officer Hartzell arrived at headquarters at about 12:30 p.m. He first met with [REDACTED] L [REDACTED] and then with [REDACTED] J [REDACTED] and [REDACTED] K [REDACTED] D [REDACTED]. At each meeting the Grievant admitted that he was absent without leave and that he was wrong in doing so. He testified that he asked to put in for leave for the hours that he had

been away from the school. In these meetings on November 25th, he was not told what, if any, discipline he would receive.

On January 26, 2016, the Grievant was served with a copy of a “Statement of Charges Filed and Action Taken.” The document charged Hartzell under Article V Section 001-10 of the Disciplinary Code. That particular Section of the Article is a catch-all for conduct considered to be neglect of duty that is otherwise not specified in other Sections of the Article. The form further set forth the undisputed fact that Hartzell on November 25, 2015 had checked in with Captain’s Aide J. ██████ stating that he was at the Hartranft School, but that instead of entering the school and performing his duties, he had left the school without permission to attend to personal business. The document included the entry, “Transfer may be part of the formal disciplinary process.”

On March 22, 2016, there was a Police Board of Inquiry (P.B.I.) hearing on the charges. The panel concluded that the Grievant was guilty, as charged, of neglect of duty and unanimously recommended that he be suspended for three days and transferred out of the Community Relations Unit. The Police Commissioner signed off on the recommendation on March 30, 2016.

Effective April 1, 2016, Police Officer Hartzell was transferred to the 24th District where he currently works.

Discussion

The Union does not dispute that the Grievant, without requesting leave or even notifying anyone, abandoned his post and assigned duties for a matter of hours to attend

to personal business. Nevertheless, the Union adduced evidence, which it contends would mitigate the Grievant's culpability.

Officer Hartzell testified in great detail about his emotional state and how it allegedly prevented him from making a timely decision as to whether or not he would attend his friend's viewing and/or funeral. While I have no reason to doubt the authenticity of the Grievant's grief, I do not find it to be a mitigating factor for his conduct. Even if I were to accept that the Grievant's emotional state interfered with his ability to follow procedure and request vacation time beforehand to attend the viewing and funeral, it does not explain why after he made the decision to do so he did not immediately contact Captain's Aide J [REDACTED] or someone else in authority to let them know that he was not at the school performing his duties. The only logical explanation is that the Grievant fraudulently intended to take care of his personal business without using any of his vacation time.

Officer Hartzell also testified that November 25, 2015 was the day before Thanksgiving and therefore a scheduled early dismissal day for the school. He explained that in these circumstances the school is still obligated to cover certain core academic offerings leaving him with less time to make formal D.A.R.E or G.R.E.A.T. presentations. In this instance, where he normally would have been making a presentation starting at 9:15 a.m., he claimed his first presentation would not have been until 11:00 a.m. By offering this testimony the Union seemed to argue that the Grievant's misconduct should not be viewed as serious as it would otherwise be due to the suggestion that November 25th was not going to be a particularly productive day. This notion, however, is contradicted by the Grievant's own testimony. He testified that an

important component of his job was to informally interact with the children outside of his formal presentations so as to build trust between the police and the community. He explained that on early dismissal days he generally worked a full eight-hour day and that it gave him the time to interact with the children outside of a formal classroom setting.

The limited amount of time that the Grievant would have spent making D.A.R.E and G.R.E.A.T. presentations, therefore, in no way lessened the seriousness of his failure to be at the school performing his job.

The Grievant testified that until he received the text from [REDACTED] I [REDACTED] instructing him to go directly to headquarters he was on his way back to the Hartranft School and that he intended work until the scheduled 4:00 p.m. end of his shift. The Grievant also tellingly acknowledged that he generally worked eight hours on early dismissal days because he didn't like to "burn" vacation time a half day at a time. By this admission, I am led to conclude that this was a component of his motivation for not requesting leave to attend the viewing and funeral and for not letting anyone know that he was there.

Article V of Philadelphia Police Department's Disciplinary Code relating to Neglect of Duty provides that for a first offense of a Section 001-10 penalties should range from a reprimand to a fifteen-day suspension. Section 009-10, although not cited by the City, seems relevant as it applies to "Absence without leave for less than one working day." Its listed penalties for a first offense range from a reprimand to a five-day suspension. Under either standard, the three-day suspension received by the Grievant was entirely appropriate and consistent with the collective bargaining agreement.

The Introduction to the Disciplinary Code states, in part, "Transfer may be imposed for all disciplinary infractions." As the prospect of a transfer as a component of discipline is not specifically listed in Article V, I construe this to mean that a transfer is not intended to be a routine element of discipline for this violation of the Code. Rather, the City must demonstrate that the additional penalty is appropriate because of the peculiar nature of the officer's current assignment or because there is reason to believe that unless removed from that assignment the officer is likely to engage in future misconduct of the same type.

The City argues that the transfer of the Grievant is justified because of the special nature of employment in the Community Relations Unit. It points to the fact that when its officers are assigned to work in schools they do not report for roll call at headquarters. Unlike officers who are assigned to a district, they remotely report their attendance and can be assigned to work anywhere within the City of Philadelphia. The City contends that the attendance of Community Relations Unit officers simply can not be as closely monitored as the attendance of officers assigned to a district, and therefore requires that it have a special level of trust in officers assigned to the Unit. It argues that it is appropriate that an officer such as the Grievant, who has been found to have been absent without leave, be transferred out of the Unit to assignment where he can be more closely monitored.

The Union counters that there are only thirteen officers in the Unit and therefore monitoring their performance is not necessarily any more difficult than keeping tabs on the many more officers assigned to a single police district. It disputes the contention that officers in the Community Relations Unit must demonstrate a higher degree of

trustworthiness than that which would be expected of any officer employed by the Department.

In considering the Union's argument, I take notice that although the officers assigned to the Community Relations Unit may be working in schools spread throughout the City as opposed to a particular district, unlike regular patrol officers, their superiors have an exact location as to where they are supposed to be for the entire day. Their attendance can be monitored through spot checks conducted by their superiors or even through phone calls to school personnel.

I also find no basis to conclude that unless the Grievant is permanently removed from the Community Relations Unit he will be any more likely to engage in future misconduct. Officer Hartzell worked in the Community Relations Unit from June of 1999 until March of 2016. Other than his misconduct on November 25, 2015, there is no evidence or contention that during his long tenure in the Unit there have been any issues with respect to his attendance or job performance. To the contrary, he appears to have performed well and to be very dedicated to the goals of the Unit. He was a national trainer for the G.R.E.A.T. program. Even after being assigned to the 24th District, Hartzell obtained permission to continue with his community relations activities at a school located within the district.

As a result of his misconduct on November 25, 2015, Hartzell has now been separated from a job that he values for over fourteen months. He has experienced serious consequences of being absent without leave. I see no increased likelihood of recidivism resulting from returning the Grievant to his former position in the Community Relations Unit. His seventeen years of successful employment in the Community Relations Unit is

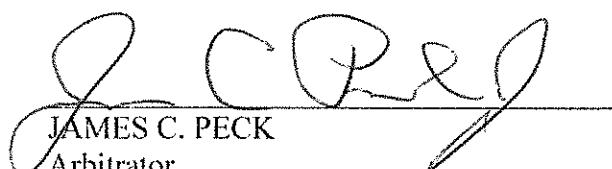
a basis for mitigating the transfer component of his discipline. Officer Hartzell needs to understand that while I am giving him a "mulligan" this time, this accommodation will not be repeated.

Consistent with the foregoing discussion and findings, I render the following:

Award

The grievance is denied in part and sustained in part.

1. The grievance is DENIED to the extent that it alleges that the Police Department violated the collective bargaining agreement by suspending Police Officer Steven R. Hartzell for three days.
2. The grievance is SUSTAINED to the extent that it alleges that the Police Department violated the collective bargaining agreement by transferring Police Officer Steven R. Hartzell out of the Community Relations Unit.
3. The City of Philadelphia is hereby directed to transfer Steven R. Hartzell back to his former position in the Community Relations Unit as soon as a position in the Unit becomes available, or within six month of the date of this decision, whichever occurs first.



JAMES C. PECK
Arbitrator
Wallingford, Pennsylvania
July 17, 2017